

1989

State of Utah v. Donald R. Allen : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 89-0449

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff, Respondent

v.

DONALD R. ALLEN,

Defendant/Appellant.

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BRIEF OF APPELLANT

Case No. 890449-CA

(Argument Priority
Classification No. 2)

BRIEF OF APPELLANT

This is an Appeal from the Verdict of Guilty of a Jury in the Second Judicial District Court of the State of Utah rendered on February 9, 1989, and the sentence for that verdict rendered on March 14, 1989, before the Honorable Roger Cornaby, District Court Judge.

DEPOSITED BY THE
STATE OF UTAH
AUG 17 1990

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IN THE UTAH COURT OF APPEALS

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| STATE OF UTAH, | : | |
| | : | |
| Plaintiff, Respondent | : | BRIEF OF APPELLANT |
| | : | |
| v. | : | Case No. 890449-CA |
| | : | |
| DONALD R. ALLEN, | : | (Argument Priority |
| | : | Classification No. 2) |
| Defendant/Appellant. | : | |

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I. STATEMENT OF JURISDICTION

The jurisdiction of the Utah Court of Appeals is granted in this matter pursuant to Section 78-2A-3(e).

II. NATURE OF THESE PROCEEDINGS

This is an appeal from a jury verdict of guilty to the charge of aggravated assault filed against the Defendant/Appellant, Don Allen, rendered on February 9, 1989, in the Second Judicial District Court of Davis County, State of Utah, with the Honorable Judge Roger Cornaby, presiding.

III. STATEMENT OF ISSUES

The only issue presented on appeal is that the jury verdict of guilty to the crime of aggravated assault is not supported by the evidence presented at trial in this matter.

IV. DETERMINATIVE LAW

Due to the nature of this appeal, no specific constitutional provisions, statutes, or ordinances are being relied upon.

V. STATEMENT OF THE CASE

1. This case is a criminal trial charging the Defendant/Appellant, Donald Allen with aggravated assault wherein the victim, was his wife, Gwen Allen. Trial was held on February 8 and 9, 1989, to an eight-person jury. The Defendant/Appellant was found guilty as charged on February 9, 1989, after approximately one and three-quarters hours of deliberation by the jury. The following facts and circumstances are established and uncontroverted by the defense or prosecution:

(a) Don Allen, the Defendant/Appellant herein, was married to the victim, Gwen Allen, on July 17, 1988, in Elko, Nevada,

just six days before the alleged assault that occurred in this matter. They had known one another for approximately four years and had absolutely no history of arguments or conflict throughout their acquaintance or marriage up to the day of the alleged assault, which occurred in the evening hours of July 23, 1988, a Saturday.

(b) During the afternoon and early evening hours on July 23, 1988, the Defendant, his wife, the victim, the Defendant's two minor children and another couple, Mr. and Mrs. Ed Farrin, and their children, went horseback riding in the mouth of Weber Canyon.

(c) At the time of the alleged aggravated assault in this matter, the Defendant/Appellant, his wife, which was the victim, and the Defendant's minor children lived with the Defendant's mother and step-father in the basement section of the Defendant's parents' home at 388 East 2625 North, Layton, Utah, in Davis County, State of Utah.

(d) At sometime after 10 p.m. on July 23, 1988, the Defendant returned home and brought his two kids in the house from the pickup truck in which the Defendant and his wife and the children returned from Weber County from their horseback riding outing.

(e) The Defendant, Don Allen, left the house after he brought his children in and shortly thereafter returned and asked his mother, Margaret Scholer, to help him bring his wife into the house.

(f) The Defendant's mother, Margaret Scholer, helped the Defendant bring his wife, the victim, in their home shortly after

the Defendant brought the children into the home. This was done at the request of the Defendant.

(g) Between the time the Defendant brought his children in the home and the time the Defendant and his mother brought the Defendant's wife, Glen Allen, the victim, into the home, the victim sustained injuries to her head. Those injuries were sustained by bullet fragments entering her head at a point behind her right ear and such bullet fragments came from a shell fired by a 44 caliber Smith and Wesson handgun owned by the Defendant, Don Allen.

(h) The victim stayed at her home with her husband, his children and her in-laws until July 30, 1988, also a Saturday, when she was taken to the emergency room at Humana Medical Center in Layton, Utah, by her husband and his mother.

VI. SUMMARY OF ARGUMENT

The verdict in this case rests on the evidence presented by the prosecution and the defense on what happened during the time the Defendant brought his children into his home and went back out and came back in to ask his mother for help in bringing his wife into the home.

The prosecution presented 21 witnesses and introduced approximately 13 pieces and groups of pieces of physical evidence to convince the jury that what happened in this short period of time amounted to aggravated assault. The prosecution's witnesses included the victim, Gwen Allen, the wife of the Defendant, who emphatically categorized the activities of this short period of

time as an accident resulting from her intoxication and desire to possibly commit suicide.

The defense put on two witnesses in addition to those presented by the prosecution. One of those two witnesses was the Defendant himself.

Taking all of this evidence into consideration, it is respectfully submitted that any construction of the evidence presented in this matter does not and should not point to a verdict of guilty of aggravated assault beyond a reasonable doubt.

VII. ARGUMENT

The prosecution's first witness was Donald Scholer, the step-father of the Defendant. His testimony runs from page 46 through page 75 of the trial transcript. It is submitted that not one word of Mr. Scholer's testimony indicates what took place during the period of time that the Defendant left the home after bringing in his children and returned asking his mother to help him bring in his injured wife, the victim. His testimony helps establish the time and other uncontroverted facts but does not shed one centila of light on the happenings of what occurred between the Defendant and the victim.

The prosecution's second witness was Margaret Scholer, the natural mother of the Defendant, Don Allen. (Her testimony for the prosecution runs from page 75 through 119 and her testimony for the defense runs from page 431 through 433 of the trial transcript.) Her testimony adds absolutely nothing to actually what happened during the critical period of time, but it certainly sheds lights on what may have happened because of things she

observed and things that were told to her by the only two parties that actually were present at the time of the critical facts and circumstances relating to this case. Mrs. Scholer had the opportunity to be the first person to speak with the Defendant, Don Allen, and observe and speak with the victim, Gwen Allen. From her testimony, we first glean that Don Allen told his mother that he needed her help to bring Gwen into the house because she was drunk and had fallen and hurt herself on the gravel driveway in front of the subject home. Mrs. Scholer observed the Defendant lying on the ground by the driver's side of the pickup truck. At this time and throughout the one week that Gwen Allen resided at the Scholer residence before she, Gwen Allen, went to the hospital, Mrs. Scholer never observed any wounds to the victim except a small cut or scratch by the right side of her nose and above her lip that was consistent with the information that Mrs. Scholer had received from Don Allen that Gwen Allen had been hurt by a fall in the gravel in the driveway. Mrs. Scholer observed that Gwen Allen "appeared drunker than a skunk" (page 82, line 24). In a nutshell, Mrs. Scholer's testimony did not indicate anything that was inconsistent with the information that she had received from her son, i.e., that Gwen had fallen from the truck and been injured by the gravel driveway due to Gwen's intoxicated state.

The next witness for the prosecution was Dr. James Hyden (testimony from page 119 through 137 of the trial transcript). Dr. Hyden first observed the victim on July 30, 1988, at approximately 1:30 in the afternoon at the McKay Dee Hospital. Dr.

Hyden was the surgeon who removed the bullet fragments from the victim's head. Dr. Hyden also established that the bullet fragments entered the victim's head above and about her right ear and that the small wound above the victim's lip to the right of her nose was a possible exit wound of a bullet fragment. Dr. Hyden also established that the wound by the right ear "had not been appreciated, and her hair was--didn't show any evidence of bleeding." And that you "really had to get her hair out of the way and specifically look for it" (page 126, lines 3 through 9). Except for the existence of a bullet wound in the victim's head, this witness gave absolutely no other evidence relevant or material to what happened at the time the alleged assault occurred.

The next witness was Beth Olsen, an emergency medical technician who aided in transporting Gwen Allen from Humana Hospital where the bullet wound was first discovered to the McKay Dee Hospital in Weber County, where the surgery to remove the bullet was performed by Dr. Hyden. Again, this witness sheds absolutely no light on what happened at the time the victim sustained the injury seven days previous on July 23, 1988.

The next prosecution witness was Linda Rosene, a registered nurse at McKay Dee Hospital, who assisted Dr. Hyden in removing the bullet fragments. She simply established the chain of evidence of the bullet fragments. Her testimony did not shed any light on the critical issues of this case.

The next prosecution witness was May Hertig, she was an emergency room attendant at the Humana Hospital where Gwen Allen

was transported by her husband and mother-in-law. Again, she was unable to give any evidence as to what happened on the evening of July 23, 1988, even though she asked the victim. She asked the Defendant what happened and he related to her the same story as he previously had related to his mother--that Gwen had fallen from the truck and hurt herself.

The prosecution's next witness was Brenda Groves, a registered nurse at the McKay Dee Hospital. (Testimony runs from page 155 through 162 of the trial transcript.) The reason that the prosecution called this witness was to establish that the Defendant, when asked by the victim's mother, "What happened? They told me she's been shot" (page 160, lines 7 and 8), that the Defendant responded, "I did. I did it. I didn't mean to hurt her. I only meant to scare her. We were struggling over the gun" (page 160, lines 12 through 14). Even though at a later time this was categorically denied by the victim's mother and the Defendant, it certainly tends to support the victim and Defendant's position that what occurred at the critical time was an accident.

The prosecution's next witness, and reasonably speaking, one who ought to be regarded as one of the most important key witnesses, is the victim herself, Gwen Allen. (Testimony for the prosecution runs from page 162 through 199 and testimony for the defense runs from page 435 through 448.) Gwen starts off by letting the jury know that she had been drinking on July 23, 1988. In fact, that she had "drank a lot that day" (page 168, lines 10 through 23). She also established that on the day of

the accident, which was just a week after her wedding day, that her husband, the Defendant and she were still celebrating their wedding and basically were winding up their honeymoon (page 170, lines 13 through 21). She also emphatically stated that she pulled the subject gun out of the pocket in the seat cover of the pickup truck. When asked by the prosecution, "Did you pull the gun out of the seat cover?" She answered, "Yes, sir." And, when asked where was it, she answered, "In the saddlebag." And, when asked where was your husband, she answered, "I don't know. I was just really upset and just, oh well, what the hell, and just being dramatic." (See page 176, lines 16 through 26, and page 177, lines 1 through 6.) She also testified that at the time she was very suicidal, and upset about a legal problem that she had not properly attended to. Again, she was asked who pulled the gun out of the seat blanket. She answered, "I did" (see page 179, line 4 and 5). She testified that her husband was standing outside of the truck by the driver's side where she was sitting (see page 179, lines 16 through 21). Gwen, herself, testified that she did not know that she was seriously injured until she learned of it at the hospital, a week later. (See page 180, lines 6 through 10.) Gwen Allen also indicated that she had had experience with suicide attempts and guns in the past and that on this occasion she was severely depressed about her alcoholism and the legal problem that she had not taken proper care of in Weber County. (See page 187, lines 2 through 25.) There was absolutely not one word or syllable in the victim's testimony that indicated that this unfortunate accident that occurred on July

23, 1988, was anything more than simply that, an accident, caused by her drinking, her depression over issues she had not properly taken care of, and her pulling the gun from the seat cover. In addition, she reiterated and reaffirmed that her relationship with her husband had always been a very mutually helpful and compatible relationship and that there was absolutely no reasoning or motive for her husband to create her any harm or problem. Just the opposite, he was her best friend and was trying to help her out of a very embarrassing and unfortunate situation. One of the most important thoughts that should be gleaned from her entire testimony is that she did not know that she was injured by a gunshot wound either. She thought she was recovering from a very bad hangover.

The prosecution's next witness was Dave Patterson. (Testimony from page 199 through page 211.) Mr. Patterson was dispatched to the Humana Davis Hospital in North Layton on July 30, 1988, when it was ascertained that the victim had sustained gunshot wounds to the head. It appears that the prosecution simply called Mr. Patterson to testify that, after he had been dispatched to the hospital to investigate a shooting, that upon observing the victim he observed the two wounds, the one to the right of the nose and above the ear and the one adjacent to the right ear of the victim. Again, the prosecution felt it important to reveal that upon inquiry of the Defendant as to what happened that the Defendant had again told him that his wife had fallen in a driveway out in front of their residence and had been injured (page 200, lines 3 through 13).

The next prosecution witness called was Dean Ball, a detective for the Layton Police Department, who responded to the Humana Hospital on July 30, 1988, after he had been notified that they had a patient with a gunshot wound to the head. The purpose for calling this witness seemed to be to relate a conversation that Mr. Allen, the Defendant, and his mother had with this Layton detective at the hospital. This detective was the first detective to advise the Defendant of his constitutional rights. (See page 214, lines 19 and 20.) Also, it was this detective who related to the Defendant that a bullet or bullet fragment had been discovered in his wife's head. (See page 216, lines 12 through 16.) Even after this information, the Defendant, Don Allen, did not tell this officer about the shooting incident that he later related to other people involved. However, except for the testimony of the Defendant that was given by this officer via the exception from the hearsay rule, this officer could not amplify on any facts or circumstances that occurred at the critical time.

The next prosecution witness was Dr. Craig Julian. This witness was simply offered to support the contention that through X-rays and a cat scan that he ordered that he ascertained that a foreign body--a bullet or something like a bullet had entered the victim's head. This doctor reported this incident to the Layton Police Department and notified the McKay Dee Hospital that he was transporting a patient down for surgery. No evidence in his testimony could be gleaned as to what happened between Gwen and

Don Allen as they alone were outside in or about the truck on the evening of July 23, 1988.

Due to a scheduling conflict, the defense then called their first witness, Ed Smith. (Testimony between pages 233 and 251 of the trial transcript.) This was simply introduced to show the power and force of a 44 caliber Smith and Wesson handgun. Needless to say, this testimony revealed to the jury that the weapon that everyone agreed created the bullet wound to the victim's head was one of the most powerful handguns in use.

The next prosecution witness was Mark West, who was a deputy sheriff paramedic for the Davis County Sheriff's Office. This officer transported the victim from the Humana Hospital to the McKay Dee Hospital for surgery. Again, this witness did not give any new evidence except that to testify that he also noticed two wounds being a small wound just before the lip just equal or lateral to the nose on the right-hand side and there was also a small wound in front of the hairline right about the size of a fingernail. (See page 252, lines 15 through 23).

The next witness on behalf of the prosecution was Detective Kent Hedenstrom. (Testimony from page 256 through 296.) This witness seems to be the prosecution's "star" witness. Detective Hendenstrom went to the Humana Hospital and asked the Defendant if he would talk to him about this incident. The Defendant, Don Allen, said he would. It is important to realize that this initial interview occurred on July 30, 1988, starting at approximately 11:30 p.m. and going until 4:00 a.m. in the morning. (See page 260, lines 4 through 9). This was at a time when

the Defendant had been told for the first time that a fragment of a bullet was in his wife's head, that she was in critical condition and that they were doing emergency surgery to attempt to remove the bullet. During that conversation, Don Allen freely and willingly testified and told this detective that he owned a 44 handgun. (Page 266, lines 6 through 24.) It was also during this conversation that the Defendant first showed his reasoning for the reluctance he had shown previous to this interview of explaining to anyone, including his mother, about the incident with the gun. Don Allen explained to this detective that he, Don Allen, didn't want the detective to pry into his wife's private life and that he, the detective, couldn't do that to her (see page 267, lines 14 through 16). Don Allen then, on many occasions, gave this detective his rendition of what he best remembered as to what happened after he went back to the truck after he took the kids into the home. In essence, Don Allen simply told this detective, as he told everyone else who asked after this point--after it became apparent to him, Don Allen, that he could no longer protect the privacy of his wife's problems, that a struggle with the gun had occurred, that it had gone off, but that he did not think that his wife had been hurt due to the gunshot wound because if someone had been shot with a 44 caliber Smith and Wesson handgun it would have blown their head off. He also related that at some time his wife found herself on the ground--a gravel driveway--and any injuries she appeared to have would have been most probably caused by the gravel. This detective testified that the Defendant gave as many

as six differing stories during this and a subsequent August 3, 1988, interview. However, it is clear that the essence of all of those stories indicated that this entire incident that only Don and only Gwen attended in the driveway of their home, was an accident, the result of a despondent, suicidal and intoxicated attitude on the part of the Defendant's wife. All of Mr. Allen's comments to this detective seemed to be capsulized when he said, "We were scrambling for the gun, and the gun went off" (page 278, lines 11 and 12.) Also, it became apparent through this testimony of this detective that the Defendant was continually very cooperative and allowed the detective to search and review any physical evidence that he so chose, just so long as he did not infringe upon the rights of his parents, Mr. and Mrs. Donald Scholer.

The next prosecution's witness was Kathy Lynch. Kathy Lynch was a sheriff's detective with the Davis County Sheriff's Office who aided Detective Hendenstrom and others in re-creating this entire situation on a video tape, with the consent of Don Allen. This officer testified that during the re-creation, Don Allen told her that, "She was pulling it towards her. I kept saying no, and then it went off. I threw the gun down on the floor and carried her into the house." (See page 300, lines 4 through 7.) Now this testimony is simply and absolutely not what happened according to every bit of direct evidence in this trial. From Mrs. Scholer, from Don Allen, from Gwen Allen and from Mr. Scholer, all who testified that Don Allen came into the home, asked his mother to help him bring in his wife and, in fact, the

mother did go out and help him bring in his wife, who was lying on the ground in the gravel. This witness' testimony simply seemed to be offered to show that she participated in a re-enactment of an incident that had occurred sometime previous to this and a re-enactment that was to be orchestrated by the Defendant, Don Allen, who had been through a great deal of trauma due to the injuries that he now knew that his wife had sustained.

The next prosecution witness was Dr. Todd C. Grey, who is an assistant medical examiner for the State of Utah. This witness was offered by the prosecution to give his expert opinion testimony to the fact that Gwen Allen had to be shot from at least two feet away and that his expert opinion that this wound was not a self-inflicted wound. (See page 319, lines 21 through 24 and page 320, lines 18 and 19.) Again, these opinions of an expert witness do not in any fashion whatsoever contradict the prevailing and uncontroverted testimony of Gwen Allen and Don Allen, the only two people who were present at the time of this unfortunate accident, that the gunshot wounds to Gwen Allen's head were the result of a struggle and an accident.

The next two witnesses for the prosecution were Mr. and Mrs. Ed Farrin, who accompanied Don and Gwen Allen on the horseback riding expedition of July 23, 1988, the day of this accident. (Their combined testimony runs from pages 333 through 359 of the trial transcript.) Not one word of testimony given by either of these companions shed any evidence to establish that the accident was anything more than just that, an accident. These folks testified that Don and Gwen Allen were drinking, that they were

not arguing throughout the day, that they were a loving, caring couple and, of course, that they did not know what or why anything happened later on that evening of July 23, 1988.

The next prosecution witness was Julie Crump, who was a close, personal friend of Gwen Allen. Her entire testimony seemed to be offered to demonstrate that she had called a number of times during July 23 through July 30, 1988, to talk to Gwen Allen. On those various calls, she either talked with Mr. or Mrs. Scholer, never Don Allen. (See page 364, line 18.) It was never testified to that she spoke with Don Allen. Every time she called, which was four or five times possibly, she was told by one of the Defendant's parents that Gwen was busy or that they were eating dinner (see page 365, lines 9 and 10). The particular relevancy and materiality of this witness is unknown.

The next prosecution witness was Detective Kevin Fielding, who is a Deputy Sheriff of Davis County Sheriff's Office. This testimony was requested by the prosecution to simply act as foundation testimony for the chain of evidence requirements to admit Exhibit 7, which was the jacket of the bullet fragments that were removed from Gwen Allen's head. Nothing whatsoever from this witness' testimony indicates one way or the other what occurred on July 23, 1988.

The final two witnesses for the prosecution were Roger Anderson, a detective who took pictures of Gwen Allen one week after she had been injured, and James Gaskell, an employee of the State Crime Lab who testified that blood samples taken from bedding in Gwen Allen's bedroom was Gwen Allen's blood. No evidence

whatsoever from these witnesses was given to clear up what happened on July 23, 1988. The physical evidence for which they gave foundational requirements for admittance is not contested in any fashion whatsoever by the defense.

At this point, the prosecution showed Plaintiff's Exhibit No. 30, which was a video tape of a purported re-enactment of the events that occurred on July 23, 1988, and then, the defense rested.

The physical evidence offered by the prosecution included the gun, the seat cover of the pickup truck that the gun was evidently kept in, X-rays of the victim's head, the bullet fragments that were extracted from her head, a collection of pictures that were taken of Gwen Allen's head a week after the accident of July 23, 1988, a collection of bedding and segments taken therefrom to show that blood found in the victim's room were the victim's blood, and a video tape that purported re-enactment of what happened. The defense understandably did not object to any of these exhibits. None of these exhibits tended to explain what happened between the Defendant and the victim as they alone had a struggle over a gun on July 23, 1988, except that the victim did suffer fragmental gunshot wounds to her head with an apparent small entrance wound behind her right ear and at least one exit wound above her lip to the right of her nose and that this wound was caused by a 44 Smith and Wesson handgun owned by the Defendant, in the pickup truck.

The defense then called Julie Crump, the victim's girlfriend, Mrs. Donald Scholer and Gwen Allen. This was evidently

done just to reiterate a few points that the defense had already established in the cross-examine of these witnesses when they appeared for the prosecution. The most interesting point seemed to come in Gwen Allen's testimony, at page 439, that she had done some drinking after the accident of July 23, 1988, but before she was taken to the hospital on July 30, 1988. In other words, during the week that she was recovering from what she thought to be a hangover, she did some additional drinking of beer that she had stashed in her room. (See page 439, lines 21 through 25 and page 440, lines 1 through 15.) This would seem to indicate that the victim herself was certainly not worried about any injury she had sustained due to the event that occurred on July 23, 1988. This obviously leads to a conclusion that if she herself was not concerned, certainly the Defendant's mother and father and the Defendant himself had reason not to be concerned.

The next witness called by the defense was Farrah Dowell, the mother of the victim, Gwen Allen. (Her testimony runs from page 441 through 453.) The mother of the victim simply elaborated on previous suicide attempts of the victim, and especially one such suicide attempt where the use of a gun came into play (page 443, lines 22 through 25 and page 444, lines 1 through 12.) In addition, this witness directly contradicted the previous testimony of the nurse, Brenda Groves, who testified that she overheard the Defendant telling Mrs. Dowell, the victim's mother, that "I did it. I didn't mean to hurt her. We were struggling over the gun." Even though this alleged testimony from Don Allen does not seem to be in any way damaging, the victim's own mother

gave testimony in open court that when Don was asked what had happened he responded that it was an accident. (See page 446, lines 23 through 25 and page 447, lines 1 through 25, and page 448, lines 1 through 12.) Mrs. Dowell continued to testify that she had a personal knowledge of the relationship between the Defendant and her daughter and that relationship seemed to be a very normal and healthful relationship, free from arguments.

The next and final defense witness was the Defendant himself, Don Allen (this testimony runs from page 454 through 516) at which time not one word or syllable of the Defendant's own testimony, either on direct or cross examination, could be construed in any fashion whatsoever to point to anything happening at the time in question except that he was involved with his wife in a struggle over a gun due to her intoxicated and despondent state of mind. In fact, at page 467, you find his direct testimony on what happened between he and his wife wherein he says, "and then--I don't know. I guess she found the gun somewhere or knew it was there, but said something about killing hers. She got the gun. I took the gun away from her." It was during this struggle that the gun went off and evidently Gwen was injured (page 467, lines 7 through 17). Don continued to testify that not only before, but after this unfortunate accident, he and his wife have lived very happily and without conflict. The defense then rested.

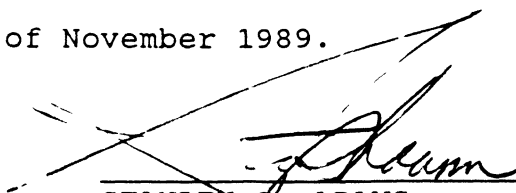
The only physical evidence introduced by the defense was some blocks of wood that were used to demonstrate the force and

impact of shots fired from a 44 Smith and Wesson handgun. They certainly did not indicate what occurred on July 23, 1988.

VIII. CONCLUSION

In final conclusion, it is respectfully submitted that the evidence presented at trial did not and should not support a verdict of guilty beyond a reasonable doubt and that the Defendant, Donald Allen, should be granted an acquittal based upon the evidence presented notwithstanding the jury verdict of guilty.

DATED this 14th day of November 1989.



STANLEY S. ADAMS
Attorney for Defendant/Appellant

ADDENDUM

1 did he say anything to you?

2 A He asked me to come and help him bring Gwen in,
3 that she was drunk and that she had fell and hurt herself.
4 And I went out, as far as I can remember -- Now, I can't
5 really swear to that for word. But I went out, and Gwen was
6 laying on the driveway like she fell out of the pickup
7 truck.

8 Q Where was the pickup truck?

9 A In my driveway right next to the gravel.

10 MR. HARWARD: Your Honor, may I approach the bench and
11 get the picture?

12 THE COURT: Yes.

13 Q (By Mr. Harward) I show you Exhibit 12, which is
14 a photograph of a portion of your house which includes the
15 driveway. Was the truck you're talking about on that
16 driveway?

17 A It was on the driveway right next to this gravel.
18 That big cut industrial gravel that's got sharp edges. And
19 the pickup was right in here.

20 Q Was it facing it?

21 A Now, I had my car parked right here in front so
22 the pickup was further up here in the driveway. And when
23 come out, she was laying right here on the gravel on her
24 right side, and she acted drunker than a skunk. And all she
25 was "rure, rure, rure" when I was helping her -- picking her

1 intervention?

2 A Well, that wound, I guess, at Davis North had not
3 been appreciated, and her hair was -- didn't show any
4 evidence of bleeding. There was no acute bleeding from
5 either of these sites.

6 Q But you could see each sight, could you not?

7 A Yeah. The sight that was in the temporal area in
8 front of her ear you really had to get her hair out of the
9 way and specifically look for it.

10 Q Did there come a point in time when you changed
11 your opinion about the entrance wound?

12 A Yes, I did.

13 Q What was that?

14 A That was at the time I did her surgery.

15 Q And then what did you conclude in that regard?

16 A I concluded that the entrance wound was this from
17 of the ear on the right side and that the cut in front of
18 her -- in her cheek and adjacent to her nose was one of the
19 exit sites for a small fragment.

20 Q In assisting you in your work, did you have any
21 x-rays or C.T. scans?

22 A Yes, I did.

23 MR. HARWARD: May I approach the witness, your Honor?

24 THE COURT: Yes.

25 Q (By Mr. Harward) I show you what's been marked

1 Q Who was present?

2 A Gwen's mother and Mr. Allen.

3 Q Did anyone in that group ask the defendant a
4 question which you heard?

5 A Yes.

6 Q What was the question?

7 A Gwen's mother said "What happened? They told me
8 she's been shot."

9 Q Did the defendant respond to that?

10 A Yes.

11 Q Please tell the jury what the defendant said.

12 A He said, umm, "I did. I did it. I didn't mean to
13 hurt her. I only meant to scare her. We were struggling
14 over the gun."

15 Q Was there any other explanation?

16 A There was nothing else that I heard. I left the
17 room and asked the clerk to notify the sheriff's department
18 at that time.

19 Q Did you report that to a deputy sheriff?

20 A Yes, I did.

21 Q Who did you report it to?

22 A Mike Olson.

23 Q When did you report it in relation to when you
24 heard it?

25 A Within a half an hour.

1 Q And they did?

2 A Yes, sir. And somehow -- anyway, to the best of
3 my recollection, we all wound up the canyon riding the kids
4 on horses.

5 Q Gwen, before you met with the Ferrins on that day
6 had you been drinking any alcoholic beverage?

7 A Probably so.

8 Q Do you remember whether you had?

9 A No, I don't remember.

10 Q After you got with the Ferrins, did you drink any
11 alcoholic beverage?

12 A Yes, I did.

13 Q Did you drink beer?

14 A Yes, sir.

15 Q Who bought the beer?

16 A Either me or my husband or Ed. I really don't
17 remember specifics.

18 Q Would you have had your own spending money to buy
19 beer with?

20 A Yes, sir.

21 Q Do you remember how much beer was purchased?

22 A No, I don't. I know I drank a lot that day,
23 though.

24 Q Was it in cans or bottles?

25 A Cans probably. It's usually what I drink. I'm

1 day?

2 A Yes, sir, as far as my marriage is concerned. Bu
3 as far as my condition is concerned, it's been very
4 frustrating.

5 Q But I'm asking about the marriage. You considere
6 the marriage --

7 A The marriage has been perfect. Not perfect, but
8 it's been very happy, very well. I get a lot of support
9 from Donald and his family.

10 Q You were happy, and all the adults were
11 participating in a celebration on July 23rd; is that
12 correct?

13 A On the day of the accident. I don't remember
14 exactly what day it was. It was a week after the wedding.

15 Q In any event, the day that you got a gun shot
16 wound to the head, on that day, you and your husband and th
17 Ferrins were celebrating your wedding?

18 A Right.

19 Q Is that correct?

20 And it was a happy occasion for you?

21 A Yes, it was.

22 Q What other activities did you engage in when you
23 were together with the Ferrins? Was there some horse
24 riding?

25 A I didn't ride the horses.

1 it. We'll get a lawyer, and then you can go back to court.

2 Q Gwen, had he driven the truck away from the home?

3 A I don't remember, sir.

4 Q You don't remember whether you stayed in the

5 driveway or drove someplace?

6 A No.

7 Q Did you see the gun?

8 A (Witness indicates by nodding head up and down.)

9 Yes, sir.

10 Q You need to answer outloud.

11 A Yes, sir, I did.

12 Q Where was the gun?

13 A Right in the saddle bag.

14 Q In the seat blanket?

15 A Yes, sir.

16 Q Was it by the driver's side or by the passenger's

17 side?

18 A I don't really remember. I just remember seeing

19 it.

20 Q What did you first see?

21 A I don't remember what I saw. All I can remember

22 is what I was thinking.

23 Q Did you pull the gun out of the seat cover?

24 A Yes, sir.

25 Q Where was it?

1 A In the saddle bag.

2 Q How did you know it was there?

3 A I don't know.

4 Q Where was your husband?

5 A I don't know. I was just really upset and just
6 "Oh, what the hell" and just being dramatic.

7 Q You don't remember where the pickup truck was?

8 A Last I remember we was in front of the house.

9 Q What did your husband say to you?

10 A Excuse me?

11 Q What did your husband say to you?

12 A He tried to calm me down and tell me it would be
13 okay. We'd get a good lawyer, and we'd go back to court.
14 couldn't afford a lawyer, so I asked for the public
15 defendant.

16 Q Tell the members of the jury what happened with
17 the gun.

18 A I was very suicidal. I was very upset about the
19 situation I was in, and Donald had been a very good friend
20 of mine for the past four years prior to the marriage. And
21 I didn't want to jeopardize him into taking responsibility
22 over something that I felt like I should be able to take
23 care of, and I was very upset. But the public defendant
24 scared me, and I didn't go back in front of the judge, and
25 was terribly upset about that.

1 Q Gwen, when you were upset, was your
2 to speak to you?

3 A He was trying to calm me down and tell me it woul
4 be okay.

5 Q Was he trying to get your attention?

6 A He shoved the gun down his throat.

7 Q He what?

8 A He put the gun down his throat.

9 Q Down his throat?

10 A He took the gun away from me and put it down his
11 throat.

12 Q If I showed you the gun, would you recognize it?

13 A Yes, sir.

14 Q I'll show you what's been marked for
15 identification as Exhibit 1. Do you recognize this gun?

16 A No, sir. Ours had a scope on it.

17 Q Well, the one he put down his throat, what did it
18 look like?

19 A It had a scope on it.

20 Q Scope on it? It didn't look like this one?

21 A No.

22 Q How long was the barrel?

23 A I don't know. It was long. It was a big handgur
24 and it had a telescope on top of it.

25 Q Now, the gun that you're saying was pulled out of

1 the seat blanket had a big scope on it?

2 A (Witness indicates by nodding head up and down.)

3 Yes, sir.

4 Q Who pulled the gun out of the seat blanket?

5 A I did.

6 Q How did your husband get it to point it down his
7 throat?

8 A I took -- He took it away from me.

9 Q Was he --

10 A When he stuck it down his throat, I got mad and
11 felt instant fear of jeopardizing somebody's life because
12 my dramatics, and I grabbed it from him and I don't
13 remember.

14 Q Do you remember the gun going off?

15 A No, sir, I don't.

16 Q When he took the gun and pointed it at himself,
17 was he in the truck or out of the truck?

18 A He was standing by the steering wheel of the
19 truck.

20 Q Where were you?

21 A Sitting in the driver's space.

22 Q Were you facing him?

23 A Yes, I was.

24 Q Were you saying anything?

25 A I was trying to talk him out of it by that time.

1 Q What were you saying?

2 A I don't remember. I told him I'd be okay and I
3 needed to just go take care of it.

4 Q What did he say, Gwen?

5 A I don't remember.

6 Q What did he say when he pointed the gun at
7 himself?

8 A I don't really remember too much, just he said
9 something real loud like "You want to see what it's like for
10 somebody to die? Do you want to screw around and play with
11 a gun?" And then he shoved it down his mouth, and I got
12 really upset and grabbed it from him.

13 Q You don't remember the gun going off?

14 A No, sir, I don't.

15 Q And you don't know where the truck was when that
16 happened?

17 A No, sir.

18 Q You don't know if it was still in the driveway?

19 A The last I remember we was in the driveway. I
20 don't know if we left. I know I drank some more beer. I
21 don't know.

22 Q Do you remember your husband and his mother taking
23 you into the house?

24 A No, sir, I don't.

25 Q What's the first thing you remember?

1 A Yes, sir; but I've been off of drugs since '85.

2 Q Had it got you depressed in the past?

3 A Yes, sir.

4 Q Very depressed?

5 A Severly.

6 Q To the point of trying to commit suicide?

7 A Definitely.

8 Q On more than one occasion?

9 A Yes, sir. A lot of times it was accidental.

10 But....

11 Q In the past, had you even looked for a gun?

12 A I've been told that, yes.

13 Q By your mother?

14 A Yes, sir.

15 Q And on this occasion, were you getting down on
16 yourself again?

17 A Excuse me?

18 Q On the 23rd of June, were you getting down,
19 depressed again?

20 A Severely.

21 Q Because of your abusing alcohol and the D.U.I.?

22 A And because it didn't make me feel too good about
23 myself is the reason I was so upset. And rather go to jail
24 and get it taken care of than to have to live with that
25 guilt, I couldn't live with it, and it was bothering me.

1 Q Drawing your attention to the 30th day of July
2 1988, were you on duty?

3 A Yes, I was.

4 Q Did you receive a call to go to a particular
5 hospital?

6 A Yes, I did.

7 Q What time did you receive that call?

8 A Let me reflect on my notes here.

9 I believe it would have been 12:58.

10 Q What hospital did you go to?

11 A Humana Davis North in Layton.

12 Q About what time did you arrive?

13 A Would have been shortly after the call. I was on
14 on the road and close to the area. It would have been just
15 a few minutes after receiving it.

16 Q Did you go there alone?

17 A I responded alone and was met by another officer
18 at the scene, also.

19 Q Who was the other officer?

20 A Officer Kirk Kennedy. He is a police officer with
21 Layton, also.

22 Q By what method did you receive the summons to go
23 to the hospital?

24 A I was advised by the dispatch.

25 Q I don't need to know what they said. By way of

1 Q Would you point him out, please.

2 A He's sitting at counsel table there.

3 MR. HARWARD: May the record show that he's identified

4 the defendant?

5 THE COURT: The record can show that.

6 Q (By Mr. Harward) Where did you meet with the

7 defendant?

8 A It would have been one of the waiting rooms --

9 Well, at first outside the door where it heads into the

10 emergency room area. That's where I first met he and his

11 mother.

12 Q Did you identify yourself to him?

13 A Yes.

14 Q Who did you tell him you were?

15 A I told him I was Detective Ball, Layton Police

16 Department.

17 Q Did you tell him what you wanted to do?

18 A I told him I wanted to talk with him.

19 Q Did you advise him of his constitutional rights?

20 A I did.

21 Q Did you do it from memory, or did you use a card

22 to do it?

23 A From memory.

24 Q Can you tell us now what you told him then?

25 A I advised him --

1 this point for medical attention.

2 Q At that point in time, did you share with him any
3 information that you had about Gwen Allen's condition?

4 A No, I did not.

5 Q Did there come a point in time in your interview
6 that you told him that you had information that there was
7 gun shot wound involved?

8 A Yes, there was.

9 Q But prior to the time that you told him that, did
10 you have a discussion with him?

11 A Yes.

12 Q How long had you been talking with him before you
13 told him that you had information there was a gun shot
14 involved?

15 A Oh, boy. Probably in the neighborhood of
16 25 minutes or so.

17 Q Now, before you mentioned it to him, did he
18 mention it to you?

19 A No.

20 Q Start in the beginning of your interview with him
21 after you gave him the Miranda warning and he waived it and
22 was willing to talk to you. What's the first thing you
23 said?

24 A I have to refer to my notes if that's okay.

25 Q You have some notes in your hand. Did you prepare

DIRECT EXAMINATION

BY MR. HARWARD:

Q Would you, please, state your name.

A Marc West.

Q Even though it's obvious to us, but we need it for the record, what is your occupation?

A I'm a deputy sheriff paramedic for the Davis County sheriff's office.

Q How long have you been doing that?

A June of 1988. And then before that for seven years. I left for about a three and three-quarter years where I went to work for the Layton Police Department.

Q Did you have occasion from time to time to transport a patient from one hospital to another?

A Yes, sir.

Q Have you been trained in doing that?

A Yes, sir.

Q Maintaining patient stability during that transit

A Yes, sir.

Q Drawing your attention to the 30th day of July 1988, did you become involved in the transportation of a patient identified as Gwen Allen?

A Yes, I did.

Q What was your involvement in that regard?

A I responded to Davis North Medical Center. And a

2 County sheriff's ambulance had a patient loaded on a
3 stretcher, and I accompanied her to the McKay Dee Hospital
4 in Ogden.

5 Q What medical attention was rendered by your team,
6 if any?

7 A To the best of my knowledge, we gave her some
8 oxygen, and she had a cardiac monitor on during the
9 transport.

10 Q But you didn't interfere with any wounds that you
11 saw?

12 A No, sir, I did not.

13 Q Did you observe her face or her head?

14 A Yes, I did.

15 Q Did you observe any wound or wounds?

16 A To my best recollection, I observed two wounds.

17 Q Can you describe those?

18 A There was a small wound just before the lip just
19 equal or lateral to the nose on the right-hand side. And
20 there was also a small wound in front of the hair line right
21 here that was about like a fingernail, small, sort of
22 circumvential. Not totally round, but almost like a
23 fingernail. Just curved on the ends.

24 Q And you're pointing right here?

25 A Just up here.

1 A yes, I did.

2 Q Did you interview him more than once?

3 A Yes.

4 Q How many different sessions were involved in you
5 interviewing the defendant?

6 A Two.

7 Q When was the first one?

8 A The first one was that evening about the same time
9 that I first saw Mrs. Allen, about 11:30.

10 Q And how long was that session?

11 A Till approximately 4:00 in the morning.

12 Q Okay. When was the other session with her?

13 A The other session was in about August 3rd, as I
14 remember. I'd have to check my notes to be absolutely
15 positive.

16 Q Can you do that real quickly?

17 A Yes, I can.

18 Yes. It was August 3rd, 1988, at 10:14.

19 Q Now, before --

20 THE COURT: a.m. or p.m.?

21 MR. HARWARD: I'm sorry?

22 THE WITNESS: a.m.

23 Q (By Mr. Harward) Did you -- Before you had your
24 first session with the defendant, had you talked to some
25 other law enforcement officers?

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A Well, after that, I made a statement "So somebody shot her?" And he told me that somebody either shot her or she shot herself.

Q Then what happened?

A I asked him if she owned a gun, and he told me that she did not. I asked him if he owned a gun, and he said that he did. I asked him if he had the gun with him, and he said that he did not. I asked him if he found a gun at the scene, and he had difficulty answering this particular question.

Q What did he say?

A I don't remember. He had difficulty and later told me that he did. I don't remember the exact statement. It was just not a direct.

Q Then what did you say?

A I asked him what kind of a gun it was, and he told me it was a .44. I asked him what type of a gun it was. There was no answer to that question, so I started naming some guns that I knew: black powder, revolver, single-action. He told me it was a 6-shooter.

★ I asked him if it was a single-action, and he told me it was. And later he told me it was a Smith and Wesson. We then went into what happened to the gun.

Q Okay. What did you say, and what he did say in

1 that regard?

2 A I asked him what he had done with the gun, and he
3 said that at the point he found it, he through it back in
4 the truck and it should still be there.

5 Q Now, you're talking about the same truck that Gwen
6 had been shot?

7 A The truck where the shooting had occurred, yes.

8 Q So he said he put it back in that truck?

9 A Yes.

10 Q Then what was said by you and by him?

11 A I asked him if anybody else drove the truck, and
12 he told me that his dad did.

13 Q Okay. Continue.

14 A Okay. At that point, he told me that I wasn't
15 going to pry into Gwen's private life, that I couldn't do
16 this to her. I explained that it was my job. I had to do
17 it, that we had a woman what we -- again knew we had a woman
18 in the hospital with a bullet wound in her head, and we now
19 knew that she had been in the house for a week. And it
20 seemed to me people should have known that, and we were
21 going to find out why.

22 MR. VANDERLINDEN: I object to what it seemed to him.

23 Q (By Mr. Harward) Is this something that you were
24 saying to the defendant?

25 THE COURT: I'm going to overrule the objection. He

1 having her kids. He said the gun then went off, but he had
2 nothing to do with it.

3 Q Did there come a point in time in your discussions
4 with him that he gave an explanation different than that?

5 A Yes.

6 Q When, where and who was present?

7 A Shortly after that. The same people were present.

8 Q Same place?

9 A Yes.

10 Q Okay. What did he say?

11 A Then he said "We were scrambling for the gun, and
12 the gun went off." At this point we re-enacted what had
13 happened with me being the victim, Mr. Allen being himself.
14 We unloaded Detective Larson's gun, and I had Mr. Allen show
15 him how he remembered he was holding the gun. He had the
16 handgun facing Gwen Allen. Mr. Allen said when he grabbed
17 for the gun, the gun went off in Gwen's face. I explained
18 that it had not -- that she had not been struck in the face
19 but struck on the side of the head, the right temporal area.

20 Q That's what you said to him?

21 A Yes.

22 Q What did he say?

23 A Mr. Allen told me this could not be. I asked
24 Mr. Allen what he did immediately following the gun shot.
25 He said he picked Gwen up, put her on the seat, threw the

1 Q This is something the defendant said?

2 A Yes.

3 Q Okay.

4 A These are all in his -- it's him speaking.

5 "She was pulling it toward her. I kept saying no,
6 and then it went off. I threw the gun down on the floor and
7 carried her into the house."

8 At that point, you know, after we finished, he
9 carried me in. He demonstrated with his hands as he had the
10 gun in his hand that he was holding --

11 MR. VANDERLINDEN: This is on the video, your Honor.
12 Again I think we're getting the same thing as before. I
13 would prefer them to see the video rather than her
14 explaining the video.

15 MR. HARWARD: And I'm just asking her to tell audio
16 parts.

17 THE COURT: All right.

18 Q (By Mr. Harward) What Mr. Allen said to you.

19 A Okay.

20 Q Did he give you any instructions concerning what
21 you were to do with your hands?

22 A Just he said that I was to -- he said the victim
23 actually was pushing during this time or pulling, you know,
24 struggling to get the weapon away from him.

25 Q So did he tell you what to do?

1 Q Did you see any evidence of stippling apparent in
2 the photograph?

3 A No, I saw nothing that looked like stippling in
4 those pictures.

5 Q Now, were you given any information about the age
6 of the patient?

7 A Umm, I can't remember.

8 Q Assume the patient is a female, age 31 years of
9 age, that she suffered a gun shot wound on July 23rd, 1988,
10 and was taken to a hospital on July 30th, one week after the
11 shot.

12 A (Witness indicates by nodding head up and down.)

13 Q Still alive, of course. And that the bone that
14 you looked at was surgically removed at the hospital. And
15 taking into account all the other things that you've already
16 testified to that you have observed including x-rays, photos
17 of the patient, piece of the bone and the test-firing cards
18 here, did you arrive at an opinion at the closest distance
19 the end of the muzzle was necessary to have been when the
20 gun was fired?

21 A Yes. I felt that the absence of visible stippling
22 in the picture that I looked at in comparison with the
23 test-fired indicated that the weapon probably had to be held
24 two feet or more away from the entrance wound.

25 Q Now, you previously characterized the one by the

1 ear because of the beveling of the bone and other such
2 factors as being consistent with an entrance wound?

3 A That's correct.

4 Q What would you have expected to have found if the
5 entrance wound -- if the wound by the nose was an entrance
6 wound?

7 A The wound by the nose was a very small slit, like
8 a defect in the skin. If a .44 caliber projectile had
9 struck the individual here, I'd expect to see a larger hole,
10 a more circular appearing hole with maybe some evidence with
11 scraping around the edges of the wound.

12 Q Based upon all the information that you had
13 including the hypothetical information that I just gave you,
14 did you arrive at an opinion as to whether these wounds were
15 consistent with having been self-inflicted?

16 A Yes, I did.

17 Q What was your opinion in that regard?

18 A My opinion was that it was not a self-inflicted
19 wound.

20 Q Can you explain?

21 A The entrance wound was approximately in this area.
22 The wound path was pointing downward like this, and we -- I
23 felt that you had to hold the gun two feet away from the
24 head.

25 I just find it very difficult to believe that an

1 so.

2 Q But you tried at least once a day?

3 A Uh-huh (affirmative).

4 Q Did you ask specifically for Gwen when you would
5 call?

6 A Yes.

7 Q Were you given a reason why you couldn't talk to
8 her?

9 A Just she was busy or she was -- they was eating
10 dinner.

11 Q Who told you that?

12 A Don's mom.

13 MR. HARWARD: Your Honor, I'm going after this. I'm
14 not going for the truth of what was said. I'm going for the
15 fact that she made an effort to contact Gwen and called
16 repeatedly and couldn't get access. It goes to the question
17 of what was happening to Gwen during that period of time,
18 and it rebuts some references that Mr. Vanderlinden has made
19 and comments that Defendant's mother has already made from
20 the stand.

21 MR. VANDERLINDEN: First of all, comments that I made
22 in my opening statement are not construed to be evidence and
23 can't be rebutted. That's very basic law. Mr. Harward
24 called the witnesses, and now he wants to rebut it. We're
25 trying Mrs. Scholer and Mr. Scholer, trying to say that my

1 bedroom before you went to the hospital --

2 A Yes, sir.

3 Q -- did you want her to believe that you were
4 suffering a hangover?

5 A Well, I wouldn't talk to her because I believe --
6 I thought I had a hangover and I didn't want to talk to her
7 because she would know that. And she -- I didn't feel like
8 listening to the -- forgive me, but listening to the
9 bitching. She was very defensive when it came to me and
10 taking care of myself, and vice versa.

11 Q Do you recall whether you were doing any drinking
12 between the 23rd of July and the 30th of July?

13 A The next day, let's see. The day of the accident,
14 I was drinking. I was drinking prior to that since my
15 wedding. Well, since I started. When I started, I just
16 couldn't stop. I was in trouble, and I knew it. I just --
17 The only thing I knew how to do is keep on drinking, and
18 that's what I did. But, umm....

19 Q Do you recall -- The question is: Do you recall
20 whether you did any drinking after the 23rd?

21 A Okay. After the accident, yes, sir. The next day
22 I must have stashed a few beers in my purse because my
23 mother-in-law busted me for drinking. I'm sure she caught
24 me. I was downstairs in my room doing something, drinking,
25 of course.

1 Q During that week from the 23rd to the 30th, did
2 your husband share that same bedroom with you?

3 A Yes, sir, he did.

4 Q Do you feel like you were intoxicated during that
5 week?

6 A No. I just thought I had a real bad hangover. My
7 head was really heavy, and I felt yuck. I wanted to drink
8 more. And I don't really recall too much as far as
9 specifics go on that. You know, I can pretty much tell you
10 how I felt, and I know that I maintained the best that I
11 could just so everybody wouldn't know that I had a hangover.
12 I had promised his parents that I wouldn't drink anymore. I
13 got drunk the night before our wedding, and that really hurt
14 my parents-in-laws' feelings, and I promised I would not
15 drink anymore.

16 Q I just have one more area to ask some questions
17 about.

18 During that week, did you discuss your hangover
19 with your husband?

20 A Yes, sir. The next day I had told him how I
21 wanted him to go get some more beer. I didn't know the beer
22 was in my purse, and I wanted him to get me some more beer.
23 I had a horrible hangover. I felt rotten.

24 Q Did he do anything for you?

25 A No, sir, he didn't. And then later on, I found

1 Q In the past year, has she had occasion to have a
2 problem with alcohol?
3 A Yes.
4 Q In your opinion, is she an alcoholic?
5 A Yes.
6 Q Has she voiced that opinion to you in that she's
7 an alcoholic?
8 A Well, I don't know if they really admit it or not.
9 Q Has had she had occasion to go into a treatment
10 for alcoholism?
11 A Yes.
12 Q On more than one occasion?
13 A Yes.
14 Q For an extended period of time? For weeks?
15 A Yes.
16 Q Has she had occasion to get into stages of
17 depression?
18 A Yeah.
19 Q Has she had occasion at times to get in stages of
20 severe depression?
21 A Well, yeah.
22 Q Has she had occasion to your knowledge to attempt
23 suicide?
24 A Yes.
25 Q On more than one occasion?

1 A Yes.

2 Q And has she had occasion to your knowledge to be
3 looking for a gun to commit suicide, to your knowledge?

4 A In my home she did.

5 Q What happened on that occasion?

6 A Well, she was drunk, and she went into my bedroom
7 and I followed her. And I said "What are you doing?" And
8 she said "I'm looking for the gun."

9 Q And did you take some steps at that point?

10 A Well, certainly.

11 Q And the other times she's tried to commit suicide,
12 what means did you use to attempt --

13 A Well, I don't really know. Just drugs, I suppose.

14 Q Has she been hospitalized because of these
15 attempts in the past?

16 A Yes.

17 Q Calling your attention to Don Allen, you know Don?

18 A Yes.

19 Q Have you had occasion prior to the accident on
20 July 23rd to observe Don and your daughter interact? Do you
21 understand what I mean by that?

22 A No.

23 Q Let me rephrase that question for you.

24 Prior to the accident on June 20 -- on July --

25 Maybe that's why I confused you. I apologize. Prior to the

1 beginning, he cried a lot. But he was very, very concerned.

2 Q Did he spend a lot of time at the hospital?

3 A Well, I'm not sure. When I was there, he was
4 always there.

5 Q Every time you went to the hospital, he was there?

6 A Yes. Uh-huh (affirmative). But I'm sure he
7 did --

8 Q Now, I'd like to call your attention to an
9 occasion again to McKay Dee Hospital and ask you if you ever
10 had a time to ask -- and just answer this yes or no for me,
11 please -- to ask Don what happened to your daughter?

12 A Yes.

13 Q Do you recall approximately when that was?

14 A I think it was the first day that I was there. We
15 were at her bedside.

16 Q If I told you that Gwen went to the hospital on
17 July 30th, could you help us as to a date thereafter? Would
18 it be the next day? Is that what you're saying? If you
19 know?

20 A Yeah. It was the day after the operation.

21 Q The 1st or 2nd of August, then? It was the day
22 after the operation?

23 A Uh-huh (affirmative).

24 Q And she was operated on immediately when she went
25 to the hospital to McKay Dee; is that correct?

1 A (Witness indicates by nodding head up and down.)
2 Q And you went up the next day?
3 A Yes.
4 Q And you were in her room?
5 A Yes.
6 Q Was there anyone else in the room when you arrived
7 besides Gwen?
8 A Don.
9 Q Was there anyone else in the room if you remember?
10 A In and out were the R.N.'s.
11 Q There's been testimony by a Brenda Grover, a
12 nurse. Do you recall if she was in the room? Do you recall
13 if a nurse was in there?
14 A She was in and out, yes.
15 Q Did you specifically ask Don on that occasion --
16 Well, strike that.
17 Did you ask Don something on that occasion? Did
18 you ask him anything?
19 A I asked him what happened.
20 Q Okay. Did he respond to that?
21 A Well, yes or no; because he was -- he'd start to
22 cry. When I tried to talk to him, he'd cry.
23 And I said "Do you know what happened?" And he
24 shook his head yes. And, umm, and then just a few minutes
25 went by when he could respond again. He said it was an

1 accident.

2 Q Now, Mrs. Dowell, there's been testimony by
3 Brenda Grover that she was in the room and she specifically
4 heard Don say when you asked him what happened "I did it. I
5 didn't mean to hurt her. We were struggling over the gun."

6 Did he say those words? Let me repeat them again.

7 "I did it. I didn't mean to hurt her. We were
8 struggling over the gun."

9 A No, sir.

10 Q Do you distinctly remember he referred to it as an
11 accident?

12 A Yes.

13 Q Now, what's the relationship now like between Don
14 and Gwen?

15 A Well, when they're not smooching, they're very
16 lovey-dovey. She loves him, and I'm sure he loves her.

17 Q Now, you've seen them --

18 A They're together. They're living together.

19 Q During the time that you've observed Don and your
20 daughter, have you ever seen him get physical with her? By
21 that I mean showing violence towards her?

22 A No, sir.

23 Q Have you ever seen him raise his voice in a
24 threatening manner to him?

25 A No, sir.

1 little more money saved up and take care of it.

2 Well, I guess she didn't like that. So she
3 started talking some more and whatnot, and I tried to
4 console her and got to the point where she wanted to go to
5 Ogden to get some pills. And I told her I wasn't going to
6 take her to Ogden because she didn't need no pills.

7 And then she -- I don't know. I guess she found
8 the gun somewhere or knew it was there, but said something
9 about killing hers. She got the gun. I took the gun away
10 from her.

11 Q Literally took it right away from her?

12 A Yes.

13 Q And you had it in your hands?

14 A And I had it in my hands.

15 Q What did you do?

16 A I told her "You want to see what it looks like to
17 see somebody die?"

18 I shoved the gun down my throat. At that time,
19 she grabbed my arm, and I tried to pull my arm back.

20 Q Okay. Let's stop right there for a minute, if I
21 can, Don. Let's put you in your respective positions in
22 relation to where you were at.

23 A Okay.

24 Q First of all, where was your wife at?

25 A She was sitting in the front seat in the pickup.